IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 5049 of 2003(A)

PETITIONER:

M/S.TATA TEA LIMITED, MUNNAR
REPRESENTED BY ITS DEPUTY GENERAL MANAGER,
(INDUSTRIAL RELATIONS) MR.PRAKASH SANKAR.

BY ADV. SRI.ANTONY DOMINIC
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

RESPONDENTS:

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1. THE GENERAL SECRETARY,
DEVICOLAM ESTATE WORKERS UNION,
(AITUC), MUNNAR P.O.

2. INDUSTRIAL TRIBUNAL, IDUKKI.

BY ADV. SRI.A.JAYASANKAR
GOVERNMENT PLEADER NOBLE MATHEW.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT, ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 PHOTO COPY OF COMPLAINT DT. 30-9-1998.

EXT.P2 REFERENCE ORDER ISSUED BY GOVERNMENT.

EXT.P3 AWARD PASSEDBY R2 IN KERALA GAZETTE DATED 12TH NOVEMBER, 2002.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 5049 of 2003

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Dated this, the 12th January, 2007.

J U D G M E N T

Petitioner is the management in I.D.No.113/1999 before the Industrial Tribunal, Idukki. The issue referred for adjudication was:

> "Whether the dismissal of Smt. Mary, No. 2311 is justifiable? If not, what relief she is entitled to?"

2. Smt. Mary was dismissed from service on allegations of misconduct, after conducting a domestic enquiry. The allegation in the charge sheet was that she had used filthy language against the Management Assistant, Field Assistant, Field Officer and the Company Supervisor, obstructed the officers of the management when they were doing fencing in the company's area, damaged the fixed fencing stone posts/barbed wire and threatened them with knife and stones on 11-7-1998 at about 5 p.m. In the domestic enquiry, the said workman was found guilty. Since the dismissal was after a domestic enquiry, the Tribunal considered the question of validity of the enquiry as a preliminary point and found that the enquiry was conducted properly in compliance with the principles of natural justice. Thereafter, the Tribunal considered the evidence in the enquiry and found that the findings of the enquiry officer is correct and sustainable. Thereafter, the Tribunal entered a finding that it has come out in evidence that along with the workman, her husband and son had obstructed the fencing of the boundary and there is only little connection with respect to the misconduct proved against the workman and her employment under the management. On that reasoning, the Tribunal came to the conclusion that the punishment of dismissal awarded to the workman is too harsh and directed the management to treat the workman as retrenched with effect from the date of the award and pay her backwages till the date of the award with retrenchment compensation and gratuity. The petitioner

-management is challenging the award to the extent it set aside the punishment imposed by the management.

3. The contention of the petitioner is that once the Tribunal finds that the finding of the enquiry officer was correct and sustainable, that automatically means that the finding on the misconduct is accepted by the Tribunal. After accepting that the workman was guilty of the misconduct alleged against her, according to counsel for the petitioner, the Tribunal could not have again re-appreciated the evidence to come to a different conclusion that the misconduct had little connection with the employment of the workman under the management. He would submit that if the misconduct did not have any connection with the employment under the management, then it would not be a misconduct at all. Since the Tribunal had earlier found that the misconduct has been proved, such further finding would be totally perverse and on that finding, the Tribunal could not have altered the punishment imposed by the management on the workman.

4. On the other hand, learned counsel for the 1st respondent -Union would vehemently support the award. According to him, although the Tribunal has entered the finding that the misconduct has been proved, the Tribunal was certainly justified in taking into account the fact that the whole incident occurred pursuant to a boundary dispute between the officers of the management and the husband of the workman. The husband of the workman, the workman and her son were only trying to defend their own property and in the heat of the moment, she may have said something in their attempt to protect their property, which cannot be termed to be any misconduct at all, is the contention raised by the counsel for the 1st respondent-Union. On that contention, counsel would submit that no interference is called for to the impugned award.

5. I have considered the rival contentions in detail.

6. I am unable to subscribe either to the view taken by the Tribunal or the arguments of the learned counsel for the 1st respondent-Union. First of all, after finding that the misconduct has been proved in the enquiry, the Tribunal had no business to again re-appreciate the evidence and come to the conclusion that the misconduct had little connection with her employment under the management. If the misconduct did not have any connection with the employment under the management, then it would not be a misconduct at all. On the other hand, the Tribunal had already found that it is a misconduct. That being so, the further finding of the Tribunal that there was little connection between the misconduct proved and her employment under the management is totally perverse.

7. Secondly, I am unable to countenance the contention of the 1st respondent that the misconduct had no connection with the employment under the management. No doubt, it was a property dispute. But the property dispute was between the company, which is the employer of the workman and the husband of the workman. The officers of the management were actually trying to protect the property of the management under whom the workman was working. Therefore, in fact, the workman was obstructing the action of the officers of the Company in the course of their duties. When a workman of the Company obstructs the officers of the Company while exercising their duties as employees of the Company, the misconduct committed by the workman certainly does have connection with the employment under the management.

8. Now, I shall deal with the question of validity of the interference made by the Tribunal on the punishment imposed by the management. The misconduct found against the workman is that she

used filthy language against the officers of the Company, obstructed the officers of the management when they were doing fencing in the Company area, damaged the fencing stones posts/barbed wire and threatened them with knife and stones. Till some time ago, the views of the Courts were loaded heavily in favour of the workmen on the ground that they were at the weaker end in terms of bargaining power. But, of late, the view has changed. The courts especially the Supreme Court are increasingly in favour of maintaining strict discipline in employment. Some of the latest decisions on the point have been referred to by a Division Bench of this Court in the decision of Cochin Shipyard Ltd. v. Industrial Tribunal, reported in 2006(4) LLN 939. In that decision, in paragraph 5, referring to the Supreme Court decision in Mahindra and Mahindra Ltd. v. N.B. Narawade, [2005 (1) LLN 1074], the Division Bench observed as follows:

> "5. In Mahindra and Mahindra Ltd., v. N.B. Narawade [2005 (1) LLN 1074], the Apex Court observed as follows, in Para. 14, at pages 1079 and 1080:
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> > "It is no doubt true that after introduction of S. 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined boy the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under S.11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under S.11A of the Act and reduce the punishment. . . . . ."
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> In that case, the workman was found guilty of assaulting superior. The Labour Court, Single Bench and Division Bench interfered in

> the matter and directed reinstatement. The Supreme Court quashed the same holding that power of the Labour Court under S. 11A is limited. It also followed its earlier decision in Orissa Cement, Ltd. v. Adikanda Sahu [1969 - I L.L.J. 518], and New Shrrock Mills v. Maheshbhai T. Rao [1997 (1) L.L.N. 69]. In those cases, the Labour Court interfered in the matter as only abusive language was used against the superior. The Apex Court held that punishment of dismissal for use of abusive language against the superior officer in the presence of others cannot be termed to be a punishment shockingly disproportionate warranting interference under S. 11A."

Later on, in paragraph 6, the Division Bench again extracted another decision of the Supreme Court as under:

> " . . . . . In Uttar Pradesh State Road Transport Corporation v. Subhash Chandra Sharma and others, [2000 (2) L.L.N. 402], this Court, after referring to the scope of interference with punishment under S. 11A of the Industrial Disputes Act , held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. . . . . ."

The Division Bench also noted the following observation of the Supreme Court in the case of Life Insurance Corporation of India v. R. Dhandapani, [2006 (1) L.L.N. 491]:

> "In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expensive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. . . . ."

As such, stress has changed from an attitude totally favourable to the workman to that of maintaining discipline among workmen in

industries.

9. In another decision of the Supreme Court in L.K. Verma v. HMT Ltd. and another, [(2006) 2 SCC 269], in paragraph 22, the Supreme Court held thus:

> "22. So far as the contention as regards quantum of punishment is concerned, suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal."

In that decision, the Supreme Court also quoted with approval the following paragraph from the decision of Hombe Gowda Edn. Trust v. State of Karnataka, (2006) 1SCC 430:

> "30. This Court has come a long way from its earlier view points. The recent trends in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

10. Another decision which was bearing on the point is the decision of M/s. Tata Engineering and Locomotive Company Limited v. N.K. Singh, reported in 2006 AIR SCW 6214, paragraph 10 of which reads as follows:

> "10. We find that the Labour Court has found the inquiry to be fair and proper. The conduct highlighted by the management and established in inquiry was certainly of very grave nature. The Labour Court and the High Court have not found that misconduct was of any minor nature. On the contrary, the finding on facts that the acts complained of were established has not been disturbed. That being so, the leniency shown by the Labour Court is clearly unwarranted and would in fact encourage indiscipline. Without indicating any reasons as to why it was felt that the punishment was

> disproportionate, the Labour Court should not have passed the order in the manner done. The case of R.P. Singh was not on a similar footing. He was one of the persons instigating whereas the respondent was the person who committed the acts. Therefore the order of the Labour Court as affirmed by the High Court cannot be sustained and are set aside. The order of dismissal from service as passed by the Labour Court in the disciplinary proceedings stand restored."

These judgments would definitely support the argument of the learned counsel for the petitioner-management that even verbal abuse of superiors has been considered by the Supreme Court as grave enough to warrant the punishment of dismissal and the Tribunal should not, as a matter of course, interfere with the punishment imposed by the management without a specific finding to the effect that the punishment was shockingly disproportionate to the nature of the charge found proved, under Section 11A. Keeping in view the nature of the misconduct proved against the workman in this case, as mentioned above, I am of opinion that the Tribunal was wrong in at least directing payment of backwages to the workman. I am even inclined to think that the Tribunal is wrong in interfering with the punishment imposed by the management at all. But, taking a lenient view, I modify the award deleting the direction to pay backwages to the workman but retaining the other relief directing the management to treat the workman as retrenched with effect from the date of the award and to pay retrenchment compensation and gratuity purely as a matter of sympathy. The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/